AHMAD DAMAN HURI HUSSEIN

v.

KOO CHIN YAU

HIGH COURT MALAYA, KUALA LUMPUR
LIM BENG CHOON J
[CIVIL SUIT NO. P 1464 OF 1985]
22 DECEMBER 1989

TORT: *Damages - Agreed liability ratio - 55% against plaintiff - 45% against defendant - Agreed items - Damages based on 100% liability - Special damages - Loss of pre-trial earnings - Loss of future earnings - Two items of damages yet to be determined - Nursing care - Period of pre-trial care - Period of future care.*

The plaintiff was a normal healthy person prior to the accident, and was employed as a security guard. After the accident he suffered a drastic change in his behaviour, he appeared to be severely psychotic and aggressive. It was also noted that the plaintiff had incontinence of urine and faeces as well as slurring of speech, and doctors were of the view that the prognosis for recovery was poor.

Only two items of damages were left to be determined by the Court, namely (i) damages for pain, suffering and loss of amenities and (ii) cost of nursing care.

In assessing the nursing care claim, the parties had agreed that the period of pre-trial care should be comprised of 47 months and the period of future care should be 60 months.

(1) In the present case, the plaintiff is completely helpless, his mental faculty is so reduced that he is unable to attend to his own needs. Apart from the pain he has suffered he, has also been deprived of any enjoyment of life.

In the circumstances, an award of RM90,000 is appropriate.

(2) The plaintiff is entitled to claim for compensation for the value of the services that his wife has rendered.

Taking into consideration the distressing nature of work which a person has to do, to attend to the needs of the plaintiff, the value of nursing care is assessed at RM400 per month.

(3) For the pre-trial period of 47 months, the sum awarded is RM24,000.

General Damages

Pre-trial - RM8,800
Post-trial - RM24,000
Loss of pre-trial earnings (agreed) - RM38,215
Loss of future earnings (agreed) - RM42,000

Special Damages

Agreed - RM1440

The agreed special damages, pre-trial loss of earnings and the award on the cost of pre-trial nursing care will carry interest at the rate of 4% p.a. from the date of the accident, to the date of trial. The award for pain, suffering and loss of amenities will carry interest at the rate of 8% from the date of the service of the writ to the date of judgment.

[Order accordingly.]

Cases referred to:
Kow Ah Dek & Anor. v. K. Ratnasingam [1981] 2 MLJ 24
Lim Eng Kay v. Jaffar [1982] CLJ (Rep) 190
Cunningham v. Harrison [1973] 3 WLR 97
Best v. Samuel Fox & Co. Ltd. [1952] AC 716
Wattson v. Port of London Authority [1969] 1 Llyod's Rep. 95

For the plaintiff - Jagjit Singh; M/s. Jagjit Singh & Co.
For the defendant - K. Anthony; M/s. Nordin Toji & Yusof Ahmad

JUDGMENT

Lim Beng Choon J:

In this motor accident claim liability has been agreed at the ratio of 55% against the plaintiff and 45% against the defendant. The parties have also agreed on the following items of damages based on 100% liability:

(1) Special damages in the sum of RM1440.

(2) Loss of pre-trial earnings in the sum of RM38,215.

(3) Loss of future earnings in the sum of RM42,000.

Two items of damages are left to be determined namely (i) damages for pain, suffering and loss of amenities and (ii) cost of nursing care. In assessing this nursing care claim, the parties have agreed that the period of pre-trial care comprises of 47 months and the period of future care is 60 months.

The following documents were tendered with the consent of the parties:

(a) Statement of agreed facts, Exhibits 'AF'.

(b) Agreed bundle of documents, Exhibit 'AB'.

The following facts are not disputed. Prior to the accident which occurred on 31 August 1984, the plaintiff was a normal healthy person and he was working as a security guard with a company known as Western Digital Malaysia Sdn. Bhd. Upon meeting with the accident he was brought into the University Hospital Kuala Lumpur ('UHKL') unconscious. He was discharged from the hospital on 3 October 1984 but he was still unconscious. He regained consciousness only four months after the accident. Upon regaining consciousness there was a drastic change in his behaviour. He was seen again in the surgical clinic of UHKL and noted to be severely psychotic and aggressive. Conservative as well as specialist treatments were administered to him but without much success. His aggressive behaviour remained unpredictable. It was also noted that the plaintiff had incontinence of urine and faeces as well as slurring of speech. He was however, discharged from UHKL on 8 June 1985 as the doctors there were of the view that the prognosis for recovery was poor.

Later the plaintiff was examined by Dato (Dr.) N. Arumugasamy, the consultant neurosurgeon, of Aru Neuro Sdn. Bhd. This consultant gave his report on 11 April 1986 in which he said among other things that:

> His clinical status has continued unchanged inspite of the latter procedure. In addition, he has become incontinent of urine and faeces and developed slurring. He was a security guard before but is now totally incapacitated, boisterous at times and continuously troublesome. He had a tendency to "buang buang barang dan juga pukul orang."

He then went on to say:

> As such, I am inclined to think that his level of intellectual functioning could be improved by shunting his CSF away from his brain. However, the degree of recovery and return to a fair degree of normalcy is remote as this condition has continued in this state for some 2 years now. It is envisaged that he will require the care of an adult all his life for his daily needs and show irreversible organic brain syndrome for the rest of his natural life.

It is clear from the medical reports as well as the oral evidence given by his wife, that the behaviour of the plaintiff is now reduced to that of an infant. He cannot bathe, dry, or feed himself. He is capable of displaying petulence like that of a spoilt child and at times he can even turn aggressive. He has no control over the evacuation of his bowel and the passing of urine.

The plaintiff's wife said in her evidence (and I accept what she said) that she has five children and the eldest daughter was only 11 years old at the time of the accident. The wife has to attend to the needs of the plaintiff from the time he was discharged from the UHKL. At the same time she had to go out to work as a part time washerwoman to maintain the family. Her monthly earning is only RM150.

In my assessment of the claim for damages under the head of pain, suffering and loss of amenities on a 100% liability basis, I would like to refer to two Federal Court authorities. In the first case of *Kow Ah Dek & Anor. v. K. Ratnasingam* [1981] 2 MLJ 24, the Federal Court refused to disturb the award of RM70,000 for pain, suffering and loss of amenities made by the trial Judge. The plaintiff there was described as suffering a minimal brain damage resulting in considerable change in his behaviour. He had lost confidence, frequent headache and he suffered decreased vision on his right eye. He also suffered from a loss of equilibrium - vertigo. But one important factor to notice is that the plaintiff in that case was able to continue to be employed as a teacher in the school of which he was a headmaster prior to the accident. In the second case of *Lim Eng Kay v. Jaafar* [1982] CLJ (Rep) 190 the Federal Court again refused to disturb the award of RM80,000 given by the trial Judge for the same head of damages. In that case the plaintiff also sustained brain injury resulting in the reduction of his confidence to that of a child. His memory was poor and his behaviour was inappropriate, laughing unappropriately and unable to appreciate the proper atmosphere of the occasions or situations in which he was. Again there the plaintiff was not so helpless as to be unable to seek some kind of manual work which would not require great concentration or deep thinking. In the present case the plaintiff is completely helpless - his mental faculty is so reduced that he is unable to attend to his own needs. From a normal healthy person he has now been reduced to a living body without a spirit. Apart from the pain he has suffered he has also been deprived of any enjoyment of life. In the circumstances I think an award of RM90,000 is appropriate.

As to the claim for nursing care, it has been stated in *Cunningham v. Harrison* [1973] 3 WLR 97 at 98 that:

> It seems to me that when a husband is grievously injured - and is entitled to damages - then it is only right and just that, if his wife renders services to him, instead of a nurse, he should recover compensation for the value of the services that his wife has rendered. It should not be necessary to draw up a legal agreement for them. On recovering such an amount, the husband should hold it on trust for her and pay it over to her. She cannot herself sue the wrongdoer (see *Best v. Samuel Fox & Co. Ltd.* [1952] AC 716); but she has rendered services necessitated by the wrong-doing, and should be compensated for it. If she had given up paid work to look

after him, he would clearly have been entitled to recover on her behalf; because the family income would have dropped by so much: see *Wattson v. Port of London Authority* [1969] 1 Llyod's Rep. 95, 102, per Megaw J. Even though she had not been doing paid work but only domestic duties in the house, nevertheless all extra attendance on him certainly calls for compensation.

It is clear from proposition stated in that case that the plaintiff here is entitled to claim for compensation for the value of the services that his wife has rendered. Now the plaintiff's wife had said in her evidence that even if she was willing to pay RM500 p.m. to engage a person to attend to her husband, she could not find anyone to do the work. I am inclined to think that she has exaggerated as regards to the sum which she is prepared to offer. However that may be and taking into consideration the distressing work which a person has to do to attend to the needs of the plaintiff I assess the value of the nursing care as RM400 per month. For the pre-trial period of 47 months, the sum awarded is therefore RM18,800. For the post-trial period of 60 months or 5 years I use the same multiplicand and the sum awarded is according to the annuity table, RM24,000 (round figure).

The agreed special damages, pre-trial loss of earnings and the award on the cost of pre-trial nursing care will carry interest at the rate of 4% p.a. from date of accident to the date of trial. The award for pain, suffering and loss of amenities will carry interest at the rate of 8% from the date of the service of the writ to the date of judgment. There will be no interest in respect of agreed damages for loss of future earnings and my award on the cost of post-trial nursing care.

The plaintiff is entitled to costs of these proceedings.

Also found at [1990] 1 CLJ 747